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APPENDIX.

YORK, 13th July, 1823.

MAY IT PLEASE YOUR EXCELLENCY,

The peculiarity of my situation will, I hope, justify the presumption of passing by your private Secretary, to address myself directly to your Excellency.

Being called upon by Mr. Hillier with the last Dispatch from Earl Bathurst, on the subject of claims for loss by the war, he read to me a list of names intended by your Excellency to be inserted in the Commission of Enquiry referred to in the Dispatch, and said that it was your Excellency's pleasure that I should be consulted if there was any objection to the persons named.

I thought that there could be none, and said so; but observed that the Attorney-General would probably wish to be excused from such a duty.

Some time after, I saw in the Gazette Appointments of the Commissioners named, that in place of the Attorney-General's, that of Mr. Alexander Wood was inserted.

I was surprised, and enquired of Major Hillier if Mr. Wood's name was in the list which he read to me. Mr. Hillier instantly replied that it was not; but that as your Excellency approved the remark in respect to the Attorney-General, his name was left out, and that he was directed to find another person, and that he had consulted Dr. Strachan, who mentioned Mr. Wood, to whom he considered that there could be no objection, and therefore had not referred to me, which I desired the Major to bear in remembrance.

The Major then said, that he hoped that there was no objection; to which I answered, there was such a one as did not admit of my silence if called upon by his Excellency to approve.

There was then no specific cause shown; but Major Hillier observed, that your Excellency doubtless expected that I was consulted, and that he would explain the reason why I was not.

Some days afterwards, Major Hillier told me that he hardly knew what to say, without something specific to act upon.

I put into his hand the Correspondence (No. 1. II.) accompanying this.

The next visit of Major Hillier to me was to say, that the expression of my feeling to Mr. Wood in that Correspondence was very strong, but still there was nothing tangible. I then put into his hand the detail referred to in the Correspondence, which I forbear to transcribe, not to offend your Excellency's moral sense.— Upon the perusal of that paper, the Secretary was pleased to say, that your Excellency could not permit Mr. Wood to sit on the Commission with those Gentlemen; but that it would be painful to him to discuss the matter with your Excellency; that he would adopt means to induce Mr. Wood to decline; and expressed a hope that he was at liberty to use the Communication which I had made to him.

I certainly thought that the Correspondence between Mr. Wood and myself, although so long past, might have sufficed to account for my declining to approve his nomination when consulted by your Excellency; but when that was questionable, would not withhold the last document.

It is here proper to remark to your Excellency, that, notwithstanding my strong expression to Mr. Wood in answer to his note of the 6th July 1810, I had met Mr. Wood, since his return, in all places and societies as before this knowledge came to me; and no public prosecution having followed, treated him as before, except that his personal visits at my house and table, which had been very frequent for eight years before, were entirely dispensed with for twelve years since.

Thus things remained when accident recalled notice.

At the Gaol Delivery during the last Session of the Legislature, Mr. Justice Campbell had kindly offered to relieve me from that duty, as I was engaged in the Legislative Council.

The usual associate Judges not being able to attend, Mr. Baby being absent at Quebec, and Mr. Allan in domestic affliction, I requested Mr. Campbell to name his associate, and the name of Mr. Wood was by him transmitted to me to insert in the Commission. I felt it to be beyond all power of complaisance or friendship, and declined it, with a verbal message by the Clerk of Assize, that I would offer my reason for so doing, at our first meeting.

We met at the Court-house; and Mr. Justice Boulton, who was conversant with the whole matter, was present when we explained to our Brother Judge the conversation for not putting Mr. Wood's name in the Commission.

Whether my conduct, in all this, was right or wrong, I put it to your Excellency to say, what would have been your opinion had I, being consulted by you, allowed to pass unnoticed that which, with respect to Mr. Wood, had induced me to decline inserting his name as an associate in a Commission of Gaol Delivery.

I ask no other Judge than your Excellency's discrimination on such an event.

Before Major Hillier had informed me of your Excellency's decision, the Commissioners waited upon me, without notice, to be sworn in.

I was surprised to see Mr. Wood with them, and hesitated how to act; but finding, upon enquiry of Colonel Wells, that he had seen Major Hillier that morning, I assented to mention to Mr. Wood himself the objection; and going with him into my closet, expressed to him a hope that he would withdraw for the present, on any excuse, as I had found myself obliged to refer to former matters on the occasion of this appointment.

Mr. Wood was indignant, and vehemently refused to withdraw, with so much personal acrimony, that I was obliged to return with him to the Commissioners, where, much agitated, I requested their patient indulgence whilst I dispatched a note for Major Hillier.

As I went to the door to the servant, with the note requesting Major Hillier's immediate attendance, Mr. Wood asked me if the note was to Major Hillier, and said that he would go with the servant, and left my house.

On my return to the Commissioners, I administered the oath, and reserved the blank certificate for Mr. Wood when he should return to be sworn.

The Commissioners left my house, without the least knowledge from me of the cause of my agitation or proceeding.

Mr. Wood returned with Major Hillier, and much warm reproach ensued, without any request to be sworn, and certainly without any refusal on my part; but, on the contrary, he declared that he would not act.

Major Hillier since told me that Dr. Strachan had advised an appeal to the laws for redress; but I heard no more of it until Saturday last, when Mr. Macaulay told me that a Writ of Mandamus would be moved for on Monday, and that other proceedings were resolved upon in consultation, which he was not at liberty to specify.

I then declared to Mr. Macaulay, that when it came, it would be obeyed; but that I had never refused to swear in Mr. Wood.

On the Monday morning before the meeting of the Court, Mr. Macaulay and Mr. Wood were announced in my drawing-room, where my son, who attended as my physician, then was present.

I asked their commands, and it was intimated by Mr. Macaulay that it was not his request, but Mr. Wood's, that we should be left.

I desired Mr. Powell to withdraw; observing that such a visit was, I believed, unusual for an attorney and his client to a defendant, but certainly more so from the retaining a witness on one side, and declining a fourth person on the other; but that I was a public man, and it appeared exempt from ordinary decorum, and again asked their commands.

They requested to know my inducement for refusing to swear in Mr. Wood; and upon my explicitly declaring that I had not so

refused, I was requested to state my inducement for what I had said to Mr. Hillier; and especially requested to see the papers which they understood I had shown to Major Hillier.

The answer was, to place the papers in the hands of Mr. Macaulay to read aloud; observing, at the time, that it was not usual to open to a prosecutor the means of defence; but that I considered myself in the hands of men of honor, and had no concealments.

The Correspondence with Mr. Wood of 6th and 7th July, 1810, was then read, and Mr. Wood admitted that he had received my letter. They then requested the other paper, which Mr. Macaulay read until he came near some names; on which I put my hand, saying that I could not allow him to go further, unless he would declare that the names of any persons should not be repeated, or in any wise made use of.

Mr. Macaulay then declared that he had accompanied Mr. Wood professionally, to report all that should pass, and could not undertake to conceal any thing.

I took the paper from him, and declared that I was sorry, on Mr. Wood's account, that this business had taken such a course; but that for myself, I was equally ready to repose my defence on the public at large, a jury of twelve Dutchmen, or any twenty Gentlemen of York.

The same day, in the robing-room, I found Mr. Justice Boulton, the Attorney and Solicitor-General, and mentioned to them the expected motion for a Mandamus, and expressed to his Majesty's Attorney-General a hope that I might have his aid to make my Return; but I understood from him that, on his arrival at New York, Mr. Wood's case had been stated to him, in hope to retain him, which he had declined, but could not be against him.

The motion was made for a Mandamus, on the usual affidavit of a right, and the refusal to administer the oath; and it was served upon me on Tuesday; and the same day a declaration in damages to the amount of twenty thousand pounds, for the supposed injustice of such refusal, without probable cause, but from malice and wickedness of heart.

Your Excellency may perceive, from the accompanying certificates of the three Commissioners and Major Hillier, that there is no foundation in fact for the affidavit on which this Mandamus issued; for I never saw Mr. Wood on that day but in presence of those persons, except whilst we were by ourselves in my study, where I urged him to decline for the present to be sworn in; but on his persisting, I accompanied him into the presence of the other Commissioners, determined to require the presence of your Excellency's Secretary at the administration of the oath of Mr. Wood.

However misguided this gentleman is in this affidavit, I have fears that it may lead to ulterior measures, which may compel a disclosure to the public which I have ever deprecated from motives, I persuaded myself, of the purest philanthropy; but others may not think so, and the array against me is formidable in talents and influence.



Whatever may have conduced to my present state of humiliation, of which I have drained the cup to the very dregs, I trust that your Excellency will perceive, in the above relation, that my present crisis arises from a confidence in your Excellency's Private Secretary, on an occasion which I was justified to suppose required that confidence as a duty of respect to your Excellency, as the Representative of his Majesty.

I have the honor to be,

Most respectfully,

Your Excellency's Servant,

WILLIAM DUMMER POWELL.

The following is Major Hillier's explanation, received through His Excellency Sir Peregrine Maitland :—

YORK, July 28th, 1823.

MAY IT PLEASE YOUR EXCELLENCY,

Your Excellency having desired me to afford an explanation of certain circumstances detailed in a letter lately addressed to you by the Chief Justice, I take the liberty to submit the following statement :—

9th May, 1823.—In a note dated the 9th May, your Excellency desired that I would confer with the Chief Justice and with Dr. Strachan, on the subject of the appointment of Commissioners for the investigation of the Claims, &c., which a late Despatch from my Lord Bathurst rendered immediately necessary.

10th May.—I carried that Despatch to Mr. Powell for perusal, and showed him the names of five gentlemen who had occurred to your Excellency as eligible for the office of Commissioner :—these were Colonels Wells and Foster, the Attorney-General, Messrs. Robinson and Allan. In the eligibility of all these, Mr. Powell fully concurred ; but expressed his opinion that the Attorney-General would probably much rather decline the appointment ; in which opinion I entirely agreed. I went from the Chief Justice to Dr. Strachan, whom I found to agree entirely with Mr. Powell's sentiments, and especially so with regard to the Attorney-General. We had much conversation on the subject, and at length it appeared suddenly to occur to Dr. Strachan, that Mr. Alexander Wood would be a very fit person for the Commission ; but at the same time he expressed a doubt whether Mr. W.'s stay in the Province would be of sufficient duration to admit of his taking on him

such an office. I agreed with Dr. Strachan that he should ascertain from Mr. Wood the probable length of his stay in this country, without communicating to him the particular object of the enquiry; and Dr. S. informed me, when I next saw him (12th May), that Mr. Wood was likely to be detained in Canada a year or more. As that gentleman, from all I knew of him, appeared to me to be a person in all respects qualified for the situation in question by talents as well as by character, I confess it never occurred to me to be necessary that I should return to the Chief Justice to consult him on the point; but, without hesitation, I decided on suggesting Mr. Wood to your Excellency as a fit person to be substituted for the Attorney-General in the proposed Commission. Dr. Strachan's last communication to me, *i. e.* of the probable length of Mr. Wood's stay in the country, was made on Monday the 12th May; on which day I embarked to join your Excellency at Stamford, and proceeded with you to Kingston, without returning to York. During our absence, I laid this suggestion before you, and your Excellency was pleased to approve of Mr. Wood's being substituted for the Attorney-General, and direct that the necessary steps should be taken as soon as possible.

24th May.—On the morning of Saturday the 24th May, your Excellency landed at York from Kingston. The Commission for the Claims, which had been prepared in blank, was brought to you by Mr. Cameron, signed by you at the Government House, and the names given to Mr. Cameron to insert in it. On Thursday the 29th the Appointments appeared in the Gazette.

31st May.—On Saturday morning the 31st, your Excellency arrived at York, to preside at the meeting of the Bible Society, which was held at 2 o'clock, *p. m.* that day; and it was whilst the subscribers were assembling in front of the School-house, that the Chief Justice took occasion to ask of me whether the name of Mr. Alexander Wood, whom he had seen in the Gazette as appointed to the Board of Claims, had been in the original list of persons proposed for that situation, which I had formerly shown to him. I immediately replied that it certainly had not;—that Dr. Strachan, whom I had likewise been desired to consult, and who had agreed in his sentiments about the Attorney-General's probable desire to be excused from the office, had suggested in his room Mr. Alexander Wood;—that as Mr. Wood was a person of whose fitness in all respects I could entertain no doubts, it had not occurred to me to be necessary to return and consult him about it, but had submitted the name to your Excellency, and had received your orders thereon. The Chief Justice begged that I would bear in mind these circumstances, which I of course said that I would do, and that I would explain to your Excellency: and here the conversation broke off. It however naturally struck me that the anxiety manifested by Mr. Powell that he should be understood as not having been instrumental in Mr. Wood's appointment, could proceed from no other cause than a knowledge of some unfitness on

the part of that person to discharge its duties ; and I felt fearful that I might have acted imprudently in not recurring to him on the point when Mr. Wood was first thought of. I therefore took the first opportunity when I saw Mr. Powell not engaged in conversation, to draw him aside, and to express my hope that there were no objections of moment to Mr. Wood. He replied that there were such as had he been consulted on his appointment would not have permitted him to approve it ; and on my pressing him to know their nature, he put into my hand two papers—the one a letter from Mr. Wood to himself, of a very remote date, purporting to decline an invitation he had received from Mr. Powell, and requesting advice on the subject of some dilemma in which he (Mr. Wood) found himself involved, the nature of which, however, was not defined, and which he feared would expose him to much derision : the other paper was the copy of the Chief Justice's reply ; it referred to proofs of friendship formerly given, expressing great distress at the situation in which Mr. Wood had placed himself, warning him that worse than derision must attach to it, and not encouraging him to brave investigation. The nature of the business was not expressed, though something very bad was pointed at. The letter began—"DEAR SIR," and was subscribed "Your faithful Friend." I returned the papers to the Chief Justice with a remark that there was evidently something very wrong, although there was nothing defined ; and we were interrupted by a summons that the business of the meeting was about to commence.

I have already explained to the Chief Justice, on his reading me a part of the statement now before your Excellency, that there could not have been a longer interval between the two conversations above detailed than a few minutes. The Chief Justice, nevertheless, I observe, states there was one of "some days."—The dates will show that only *one* day intervened between the appearance of the Gazette, from which Mr. Powell first learned Mr. Wood's appointment, and the meeting of the Bible Society ; and I feel very confident that I had no conversation with the Chief Justice, either on Thursday the 29th, after the appearance of the Gazette, or on Friday the 30th, the only intermediate day, or on Saturday the 31st, until I reached the neighbourhood of the School-house, a little before 2 o'clock, P. M., when he first addressed to me his enquiry on the subject of Mr. Wood's appointment.

At the closing of the meeting of the Bible Society, I told the Chief Justice that I was then obliged to attend your Excellency to an inspection of the troops ; but that I should be anxious to renew the conversation. I took occasion to call on him the next day, (Sunday the 1st June, about 3, P. M.,) for that purpose. I found him walking in his garden. I repeated what I had said before, that there was evidently something very bad about Mr. Wood, and which I felt I should have to communicate to your Excellency as an objection to his continuing in the Commission of Claims, but that still there was nothing defined or tangible in what I had

seen, and that I should desire, in order to act on it, to know further particulars. The Chief Justice then produced from his pocket a note apparently made at the time of the occurrence to which the letters I had before seen alluded, and which contained details of a very disgusting nature, and disclosed conduct on the part of Mr. W. which, unless most satisfactorily disproved, must unfit him not only for offices of public trust, but for admission into society. I felt this very strongly, and, I have no doubt, expressed myself so. I was confident that if such things were known to your Excellency, you would not suffer Mr. Wood to continue in the Commission; and I felt that, knowing them myself, I ought to take every measure to prevent it; though, I confess, I shrank from the idea of having to lay such details before you. I therefore resolved, (and I told the Chief Justice my resolution,) in order to avoid this necessity, to take the first opportunity of seeing Dr. Strachan, who had suggested Mr. Wood's name to me, and through him (for I felt an equal horror of going direct to the party) endeavour to induce Mr. W. to withdraw from the Commission. In this intention I left Mr. Powell; and here I will not omit to observe that Mr. P. bore the highest testimony to the character of Mr. Wood in all other respects to his honor, integrity, and benevolence; and evinced much feeling at having to disclose such circumstances respecting him.

The following morning, (Monday the 2d June,) I was in close attendance on your Excellency, who were to leave York early the following day; and it was necessary I should receive your commands on many subjects of public business which had accumulated during eleven days' absence on military duty, in the recent inspections. About 3 o'clock, P. M., I was called from your presence by Mr. Wood, whom I found standing near the door, and who delivered me a billet from the Chief Justice, which merely said, "Mr. Wood is now in my parlor with the other Commissioners, waiting to be sworn—Can you step over?" This application was entirely unexpected by me, as I know it was by the Chief Justice; for it is within the knowledge of each of us that his being applied to on the occasion was purely accidental. I went immediately to Dr. Strachan with Mr. Wood; hoping, through the Doctor's intervention, to prevent all attempt at further proceeding. Dr. Strachan had unfortunately gone to Niagara early in the morning, and I followed Mr. Wood to the Chief Justice's, to whom we were admitted, and whom we found alone; the other Commissioners having in the interval taken the oaths and retired.

Mr. Wood, on his entrance, warmly reproached the Chief Justice with an unfriendly proceeding, and stated with many words how much more friendly it would have been, had he warned *him* that after this long interval he meant to bring forward such an objection to his holding an office of honor, as such a course would have prevented the present difficulty; on which I thought it right to observe to Mr. Wood that his secret was safe with me, and that

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any course he might have thought it right to take, had the Chief Justice done so, it was still perfectly in his power to pursue. Mr. Wood continued his reproaches to Mr. Powell, and with much warmth attributed his conduct to a feeling of hostility to the person by whom he had been suggested for his present appointment. The Chief Justice, with much composure, reminded Mr. Wood that he would not submit to insult in his own house;—that as Mr. Wood had advanced such an imputation, it became necessary that he should cause the persons who had formerly brought allegations against Mr. Wood, to take their depositions before a Magistrate, and to add to these his own affidavit of Mr. Wood's admissions to him made at the time. Mr. Wood, on this, with a very changed tone and manner, denied all intention of insult. &c.

I here again interposed. I told Mr. Wood that, placed as I was, I had only one course to pursue;—that I had hoped to spare him and myself the pain of a personal explanation by communicating with him through Dr. Strachan, who had first suggested his name for the present appointment; but that as this was no longer permitted by what had taken place and the Doctor's absence, I begged him to understand that I must be under the necessity of laying all that I knew before the Lieutenant-Governor, distressing as it would be to me to have to submit to him a subject so disgusting, unless he, on any pretext he might choose, should, before the evening of the next day, signify to me a wish to be allowed to withdraw from the Commission. Mr. Wood admitted the peculiarity of my situation, and added that he should certainly withdraw from the Commission, and left the Chief Justice's house.

Though many more words passed, these were the leading circumstances of this very painful scene. Mr. Wood made no application to be sworn into office in my presence, of which I have given the Chief Justice a certificate; on the contrary, he went away with a professed intention of withdrawing from the Commission.

In the evening, I received a note from Mr. Wood, begging me to take no steps until Dr. S. returned from Niagara; and as I knew the Doctor could not be more than a few days absent, no objection occurred to me, and I signified my assent through Mr. Allan the next day.

Mr. Wood's subsequent communications to me have been duly submitted to your Excellency, as well as Dr. Strachan's letter to me, explaining his having suggested him for the appointment of Commissioner.

The Chief Justice's first remarks to me I understand to have arisen from his desire to be considered by your Excellency as not having been instrumental in Mr. Wood's appointment to the Board of Claims. I am confirmed in this conception of them by his recent declaration that he would not mind if Mr. Wood were made Chancellor, so that he, the Chief Justice, were not instrumental in the appointment. The enquiries I addressed to the

Chief Justice arose from a desire to prevent some evil to the public service (the extent of which I could not tell), if Mr. Wood continued in the Commission.

With reference to the Chief Justice's statement to your Excellency that I informed him that Dr. Strachan had advised an appeal to the law for redress, I certainly remember perfectly to have told the Chief Justice that I had ascertained to my satisfaction that Dr. Strachan had never known the extent of what was imputed to Mr. Wood; and that on the present occasion he had plainly told him that if "he did not clear himself of these charges, he, Dr. S., must clear himself of him." It must be to this the Chief Justice has given the above interpretation; but as by a similar latitude it might be inferred that I had denounced Dr. Strachan to the Chief Justice as the instigator of a prosecution designed to ruin him, I hope to be forgiven for remarking that my knowledge of your Excellency's desire of effecting harmony and unanimity, and the discomfort I have already experienced in the necessary official intervention where discordant feelings unhappily prevail, would, as well as common sense and honor forbid any intention, on my part, to excite feelings which I have ever seen your Excellency so desirous to allay; and it would little accord with a remark I remember to have made to your Excellency, of the light in which I view Dr. Strachan's conduct on the present occasion.

I have the honor to be

Your Excellency's most faithful and obedient Servant,
J. HILLIER.

I certify that this writing and signature upon this paper is in the proper handwriting of Lieutenant-Colonel Hillier, late Secretary to Sir P. Maitland.

EDWARD M'MAHON.

Tork, 10th Jan. 1831.

